
**CHEVY CHASE VILLAGE
BOARD OF MANAGERS
FEBRUARY 9, 2015 MEETING**

STAFF REPORT

TO: BOARD OF MANAGERS
FROM: SHANA R. DAVIS-COOK, VILLAGE MANAGER
DATE: 1/7/2015
SUBJECT: LEGISLATIVE UPDATES



The 2015 Maryland Legislative Session is in full swing, and Village staff continues to monitor various bills under consideration by the legislature. Below is an update on specific bills that we have been watching. Information on these bills is being brought to the Board for your information and so you can decide if you would like to take a position on any of these matters.

MC 24-15—Establishment of a Montgomery County Independent Transit Authority

This bill was late-filed at the request of County Executive Isiah Leggett. The bill has since been withdrawn following a contentious public hearing held the evening of Friday, January 30; however, Mr. Leggett has indicated that he wants to continue discussions on a possible ITA through June; therefore, a follow-up bill will likely be reintroduced next session.

This now-withdrawn bill was “enabling” legislation, meaning that if it had been approved by the legislature, it would not have gone into effect until a local law was passed by the County Council. The bill received significant opposition from local municipalities, civic organizations and individual residents due to the limited public discussion of this matter before it was submitted to the county delegation. The public hearing was then held less than a week after the delegation accepted the late filed bill.

Key points in the bill include:

- Establishment of a local, independent transit authority (ITA) as a separate corporate entity.
- The ITA would have the ability to levy an additional property tax specifically for funding mass transit. These taxes would circumvent the Charter limits which are imposed on the County Council and which cap the amount County residents’ property taxes can go up year to year.
- The ITA would have the legal authority to acquire property through eminent domain to accommodate transit routes or supporting infrastructure.
- The ITA would have bond issuance authority, not subject to Council authorization and without the benefit of the full faith and credit of Montgomery County (therefore a higher interest rate—and more expense to County taxpayers—than County-issued revenue bonds).
- Several functions that currently fall under the existing County Department of Transportation would be absorbed under the ITA, including existing personnel and collective bargaining agreements.
- The ITA would be controlled by a five-member board appointed (not elected) by the County Executive with the concurrence of the Council, and this body would operate independently from the Council.

Although the bill has been withdrawn, it is being brought to the Board's attention since it is likely the matter will be reintroduced during a later session, possibly as early as 2016. A copy of the bill along with an analysis of the bill from County Council staff is attached for your reference.

MC/PG 105-15—M-NCPPC Planning Commission Chair Term (expand term limit from a total of eight to a total of sixteen years)

The Montgomery and Prince George's County Delegations are considering this bill, which would extend the Planning Commission Chair's term limit from a total of eight years to a total of sixteen years (subject to reappointment by the County Council at the end of each four year term). A similar bill to extend the Commission Chair's term was voted down several years ago.

There are no other known County-level appointments authorized for this length of time.

HB 113—Increase Tort Claim Limits for Local Governments

The Local Government Tort Claim Act (LGTCA) presently caps local governments' compensatory damage liability at \$200,000 per individual claim and \$500,000 per total claims arising from the same occurrence. This bill would increase the caps to \$500,000 per individual claim and \$1,000,000 per total claims from the same occurrence. The current limits were set in 1987 when the Act was originally adopted and they have not been increased since that time. The Maryland Municipal League (MML) estimates that at the rate of inflation in present value dollars, the \$200,000 limit would now equal \$416,789 and the \$500,000 limit would equal \$1,041,972.

The MML Legislative Committee met on February 3 and voted to oppose this bill upon receipt of an actuarial report (attached) issued by the Local Government Insurance Trust (the Village's liability insurance carrier), estimating that the increased limits would result in an approximate 7.9-10% increase in liability premiums across its membership pool (based on our FY2015 premiums, the Village could see an annual increase between \$2,800 and \$3,500 based on this actuarial analysis). The MML Legislative Committee believes that this bill could result in a substantial financial burden to municipalities as a result of increased liability insurance rates and attorneys' fees due to a potential uptick in liability cases as a result of the higher limits. The Committee also noted that the limits for the State are presently lower than the limits for local governments and will remain lower under a separate bill (HB 114) also introduced this session, which will increase the State's limit from \$200,000 paid to a single claimant from the same incident or occurrence to \$500,000.

Attachments

MC 24-15

Memo from Glenn Orlin, dated 1/30/15 RE: MC 24-15

MC/PG 105-15

HB 113

Email from LGIT Executive Director w/ actuarial report dated 2/2/15 RE: HB 113/114

HB 114

MC/PG 105-15—M-NCPPC Planning Commission Chair
Term (Expand term limit from a total of 8 to a total
of 16 years)

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Phelps

Typed by: Francina

Stored – 01/21/15

Proofread by _____

Checked by _____

By: **Montgomery County Delegation**

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Transit Authority**3 **MC 24-15**

4 FOR the purpose of authorizing the governing body of Montgomery County to create, by
5 local law, a Transit Authority to perform county transit functions as an
6 instrumentality of the county and body corporate and politic and governed by a
7 certain board; authorizing the governing body, by local law, to create a special taxing
8 district to finance the cost of county transit functions, impose a certain special tax,
9 specify the organization of the Transit Authority, specify certain powers of the
10 Transit Authority, establish a certain budget process for the Transit Authority, and
11 specify certain other matters related to the Transit Authority; providing that
12 provisions of the Montgomery County Charter do not apply to the Transit Authority
13 except under certain circumstances; providing that a certain tax limitation does not
14 apply to certain revenue raised for certain purposes; authorizing the Transit
15 Authority to provide for the issuance of certain revenue bonds for certain purposes,
16 subject to certain conditions and exempt from certain provisions of law; providing for
17 the tax exempt status of certain bonds; providing for reversion of certain title to
18 property under certain circumstances; declaring the Transit Authority to be a
19 “constituted authority” for certain purposes; authorizing the governing body to
20 transfer certain county transit functions to the Transit Authority; requiring the
21 governing body to provide by local law certain provisions relating to certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



employees under certain circumstances; requiring the Maryland Department of Transportation to grant to the Transit Authority certain rights; requiring that the Transit Authority be entitled to receive certain funds under certain circumstances; requiring the Transit Authority to be subject to the Montgomery County Public Ethics Law; defining certain terms; altering the definition of "local government" as it relates to the Local Government Tort Claims Act; providing for the construction of certain provisions of this Act; and generally relating to the creation of a Transit Authority for Montgomery County.

BY adding to

Article – Local Government
Section 21–703
Annotated Code of Maryland
(2013 Volume and 2014 Supplement)

BY repealing and reenacting, with amendments,

Article – Courts and Judicial Proceedings
Section 5–301(d)(28) and (29)
Annotated Code of Maryland
(2013 Replacement Volume and 2014 Supplement)

BY adding to

Article – Courts and Judicial Proceedings
Section 5–301(d)(30)
Annotated Code of Maryland
(2013 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Local Government

21–703.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

1 (2) "BOND" MEANS A SPECIAL OBLIGATION BOND, NOTE,
2 COMMERCIAL PAPER, OR ANY OTHER SIMILAR INSTRUMENT ISSUED BY
3 MONTGOMERY COUNTY OR THE TRANSIT AUTHORITY, AS THE CONTEXT MAY
4 INDICATE, UNDER THIS SECTION.

5 (3) "COST" INCLUDES ANY EXPENSE NECESSARY OR INCIDENT TO
6 THE PLANNING, DESIGN, FINANCING, ACQUISITION, CONSTRUCTION,
7 RECONSTRUCTION, RENOVATION, MAINTENANCE, EQUIPPING, AND OPERATION OF
8 COUNTY TRANSIT FUNCTIONS.

9 (4) "COUNTY TAX LIMITATION" MEANS A PROVISION OF THE
10 MONTGOMERY COUNTY CHARTER THAT LIMITS:

11 (I) THE MAXIMUM PROPERTY TAX RATE THAT THE COUNTY MAY
12 IMPOSE; OR

13 (II) THE RATE OF GROWTH OF COUNTY PROPERTY TAX
14 REVENUES.

15 (5) "COUNTY TRANSIT FUNCTIONS" INCLUDES, FOR MONTGOMERY
16 COUNTY, THE PLANNING, DESIGN, FINANCING, ACQUISITION, CONSTRUCTION,
17 RECONSTRUCTION, RENOVATION, MAINTENANCE, EQUIPPING, AND OPERATION OF
18 ANY ONE OR MORE OR COMBINATION OF TRACKS, RIGHTS-OF-WAY, BRIDGES,
19 TUNNELS, SUBWAYS, ROLLING STOCK, STATIONS, TERMINALS, PORTS, PARKING
20 AREAS, PARKING STRUCTURES, EQUIPMENT, FIXTURES, BUILDING STRUCTURES,
21 OTHER REAL OR PERSONAL PROPERTY, OR SERVICES INCIDENTAL TO OR USEFUL OR
22 DESIGNED FOR USE IN CONNECTION WITH THE RENDERING OF TRANSIT SERVICE BY
23 ANY MEANS, INCLUDING RAIL, BUS, MOTOR VEHICLE, OR OTHER MODE OF
24 TRANSPORTATION.

25 (6) (I) "SPECIAL TAX" MEANS AN AD VALOREM PROPERTY TAX, AN
26 EXCISE TAX, AN ASSESSMENT, A FEE, OR A CHARGE IMPOSED IN A SPECIAL TAXING
27 DISTRICT.

28 (II) "SPECIAL TAX" DOES NOT INCLUDE AN AD VALOREM
29 PROPERTY TAX, AN EXCISE TAX, AN ASSESSMENT, A FEE, OR A CHARGE IMPOSED
30 UNDER CHAPTER 20A OF THE MONTGOMERY COUNTY CODE.

1 (7) "SPECIAL TAXING DISTRICT" MEANS A SINGLE GEOGRAPHIC AREA
2 THAT INCLUDES THE ENTIRE COUNTY.

3 (8) "TRANSIT AUTHORITY" MEANS THE TRANSIT AUTHORITY
4 CREATED UNDER SUBSECTION (B)(1) OF THIS SECTION.

5 (B) THE GOVERNING BODY OF MONTGOMERY COUNTY, BY LOCAL LAW,
6 MAY:

7 (1) CREATE A TRANSIT AUTHORITY TO PERFORM COUNTY TRANSIT
8 FUNCTIONS THAT IS:

9 (I) AN INSTRUMENTALITY OF MONTGOMERY COUNTY THAT
10 MAY SUE AND BE SUED AND IS A BODY CORPORATE AND POLITIC; AND

11 (II) GOVERNED BY A BOARD COMPOSED OF FIVE MEMBERS ALL
12 OF WHOM SHALL BE APPOINTED BY THE COUNTY EXECUTIVE, SUBJECT TO
13 CONFIRMATION BY THE COUNTY COUNCIL;

14 (2) CREATE A SPECIAL TAXING DISTRICT TO FINANCE THE COST OF
15 COUNTY TRANSIT FUNCTIONS;

16 (3) IMPOSE A SPECIAL TAX;

17 (4) SPECIFY THE ORGANIZATION OF THE TRANSIT AUTHORITY;

18 (5) SPECIFY THE POWERS NECESSARY AND PROPER FOR THE
19 TRANSIT AUTHORITY TO EXERCISE ITS ASSIGNED COUNTY TRANSIT FUNCTIONS,
20 INCLUDING THE POWER TO:

21 (I) INCUR DEBT, INCLUDING ISSUING REVENUE BONDS,
22 COMMERCIAL PAPER, OR OTHER SIMILAR INSTRUMENTS, INCLUDING REVENUE
23 BONDS ISSUED TO REFUND OUTSTANDING DEBT INSTRUMENTS, SECURED BY
24 REVENUES RECEIVED BY THE TRANSIT AUTHORITY AND OTHER FUNDS THAT THE
25 COUNTY OR ANY OTHER GOVERNMENTAL OR PRIVATE PERSON MAY MAKE
26 AVAILABLE FOR THAT PURPOSE;

1 (II) ACQUIRE REAL AND PERSONAL PROPERTY AND INTERESTS
2 IN REAL AND PERSONAL PROPERTY LOCATED IN AND OUTSIDE THE SPECIAL TAXING
3 DISTRICT AND PLEDGE, MORTGAGE, ENCUMBER, GRANT CONCESSIONS IN
4 CONNECTION WITH, SELL, LEASE, TRANSFER, OR CONVEY ANY INTEREST IN ITS REAL
5 AND PERSONAL PROPERTY TO THE COUNTY OR ANY PERSON;

6 (III) ACQUIRE PROPERTY BY CONDEMNATION IN ACCORDANCE
7 WITH TITLE 12 OF THE REAL PROPERTY ARTICLE, IF THE ACQUISITION OF THE
8 PROPERTY IS NEEDED TO IMPLEMENT THE CAPITAL IMPROVEMENT PROGRAM OF
9 THE TRANSIT AUTHORITY;

10 (IV) ENTER INTO CONTRACTS WITH PERSONS AND OTHER
11 GOVERNMENTAL UNITS, INCLUDING UNITS OF FEDERAL, STATE, AND LOCAL
12 GOVERNMENTS;

13 (V) ADOPT POLICIES AND PROCEDURES RELATING TO THE
14 PROCUREMENT OF GOODS AND SERVICES;

15 (VI) ADOPT POLICIES, PROCEDURES, POSITION DESCRIPTIONS,
16 AND COMPENSATION PLANS RELATING TO THE RECRUITMENT, HIRING, TERMS OF
17 EMPLOYMENT, DISCIPLINE, RETENTION, AND TERMINATION OF EMPLOYEES;

18 (VII) ENTER INTO AGREEMENTS AND ESTABLISH AND
19 PARTICIPATE IN VENTURES AND PUBLIC-PRIVATE PARTNERSHIPS IN WHICH THE
20 TRANSIT AUTHORITY, PRIVATE PARTIES, OTHER GOVERNMENTAL UNITS, AND
21 INSTRUMENTALITIES OF OTHER GOVERNMENTAL UNITS MAKE INVESTMENTS,
22 PROVIDE LOANS, AND SHARE FACILITIES AND OPERATIONS; AND

23 (VIII) RECEIVE AND MANAGE FUNDS, ACCEPT GRANTS AND GIFTS
24 FROM PUBLIC AND PRIVATE PARTIES, AND INVEST FUNDS;

25 (6) ESTABLISH A BUDGET PROCESS FOR THE TRANSIT AUTHORITY
26 THAT:

27 (I) MAY INCLUDE A REQUIREMENT THAT THE TRANSIT
28 AUTHORITY SUBMIT A 6-YEAR CAPITAL IMPROVEMENT PROGRAM TO THE COUNTY
29 FOR APPROVAL AND THAT THE TRANSIT AUTHORITY'S CAPITAL AND OPERATING
30 BUDGET BE CONSISTENT WITH THE CAPITAL IMPROVEMENT PROGRAM AND THE
31 COUNTY'S APPLICABLE MASTER PLANS; AND

1 (II) MAY NOT REQUIRE THE TRANSIT AUTHORITY TO SUBMIT
2 ITS CAPITAL OR ITS OPERATING BUDGET TO THE COUNTY FOR APPROVAL; AND

3 (7) SPECIFY ANY OTHER MATTERS THE COUNTY DEEMS NECESSARY
4 AND PROPER RELATING TO THE TRANSIT AUTHORITY AS THE COUNTY MAY
5 DETERMINE.

6 (C) PROVISIONS OF THE MONTGOMERY COUNTY CHARTER DO NOT APPLY
7 TO THE TRANSIT AUTHORITY, UNLESS THE GOVERNING BODY OF MONTGOMERY
8 COUNTY EXPRESSLY PROVIDES BY LAW THAT A CHARTER PROVISION APPLIES TO
9 THE TRANSIT AUTHORITY.

10 (D) A MONTGOMERY COUNTY TAX LIMITATION THAT WOULD OTHERWISE
11 APPLY TO AD VALOREM OR SPECIAL TAXES IMPOSED IN A SPECIAL TAXING DISTRICT
12 DOES NOT APPLY TO REVENUE, INCLUDING TAX REVENUE, RAISED FOR THE
13 PURPOSE OF PAYING THE COST OF COUNTY TRANSIT FUNCTIONS.

14 (E) (1) NOTWITHSTANDING ANY OTHER PUBLIC GENERAL LAW, PUBLIC
15 LOCAL LAW, OR THE MONTGOMERY COUNTY CHARTER, THE TRANSIT AUTHORITY,
16 WITH THE APPROVAL OF THE GOVERNING BODY OF MONTGOMERY COUNTY, MAY
17 PROVIDE FOR THE ISSUANCE OF REVENUE BONDS TO FINANCE THE COST OF
18 CAPITAL EXPENSES OF COUNTY TRANSIT FUNCTIONS PROVIDED DIRECTLY OR
19 INDIRECTLY BY THE TRANSIT AUTHORITY, FOR WHICH THE PRINCIPAL, INTEREST,
20 AND ANY PREMIUM IS SECURED BY A SPECIAL TAX AND OTHER FUNDS THAT MAY BE
21 LEGALLY MADE AVAILABLE FOR THAT PURPOSE.

22 (2) REVENUE BONDS ISSUED UNDER THIS SUBSECTION ARE SPECIAL
23 OBLIGATIONS OF THE TRANSIT AUTHORITY AND DO NOT CONSTITUTE A GENERAL
24 OBLIGATION DEBT OF THE COUNTY OR A PLEDGE OF THE COUNTY'S FULL FAITH AND
25 CREDIT OR GENERAL TAXING POWER.

26 (3) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER
27 THIS SUBSECTION MAY BE SOLD IN ANY MANNER, EITHER AT PUBLIC OR PRIVATE
28 SALE, AND ON TERMS THAT THE TRANSIT AUTHORITY CONSIDERS BEST.

29 (4) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER
30 THIS SUBSECTION ARE NOT SUBJECT TO §§ 19-205 AND 19-206 OF THIS ARTICLE.

1 (5) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER
2 THIS SUBSECTION AND THE TRANSFER OF, INTEREST PAYABLE ON, AND ANY INCOME
3 DERIVED FROM, INCLUDING ANY PROFIT REALIZED ON THE SALE OR EXCHANGE OF,
4 REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER THIS SUBSECTION
5 ARE EXEMPT FROM TAXATION BY THE STATE, THE COUNTY, OR A MUNICIPALITY.

6 (6) IN ADDITION TO THE SPECIAL TAXES, REVENUE BONDS ISSUED BY
7 THE TRANSIT AUTHORITY UNDER THIS SECTION MAY BE SECURED BY OTHER
8 REVENUES OR PROPERTY OF THE TRANSIT AUTHORITY AND OTHER FUNDS THAT
9 MAY BE LEGALLY MADE AVAILABLE FOR THAT PURPOSE.

10 (F) ANY BONDS ISSUED BY THE TRANSIT AUTHORITY AND THE TRANSFER
11 OF, INTEREST PAYABLE ON, AND ANY INCOME DERIVED FROM, INCLUDING ANY
12 PROFIT REALIZED ON THE SALE OR EXCHANGE OF, ANY BONDS ISSUED BY THE
13 TRANSIT AUTHORITY ARE EXEMPT FROM TAXATION BY THE STATE, THE COUNTY,
14 OR A MUNICIPALITY.

15 (G) (1) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY
16 AUTHORIZED BY THIS SECTION ARE HEREBY MADE SECURITIES IN WHICH ALL
17 PUBLIC OFFICERS AND PUBLIC AGENCIES OF THE STATE AND ITS POLITICAL
18 SUBDIVISIONS, AND ALL BANKS, TRUST COMPANIES, SAVINGS AND LOAN
19 ASSOCIATIONS, INVESTMENT COMPANIES, AND OTHERS CARRYING ON A BANKING
20 BUSINESS, ALL INSURANCE COMPANIES AND INSURANCE ASSOCIATIONS AND
21 OTHERS CARRYING ON A BANKING BUSINESS, ALL ADMINISTRATORS, EXECUTORS,
22 GUARDIANS, TRUSTEES AND OTHER FIDUCIARIES, AND ALL OTHER PERSONS MAY
23 LEGALLY AND PROPERLY INVEST FUNDS, INCLUDING CAPITAL, UNDER THE
24 CONTROL OF OR BELONGING TO THE TRANSIT AUTHORITY.

25 (2) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY ARE
26 HEREBY MADE SECURITIES THAT MAY PROPERLY AND LEGALLY BE DEPOSITED WITH
27 AND RECEIVED BY ANY STATE OR MUNICIPAL OFFICER OR ANY UNIT OR POLITICAL
28 SUBDIVISION OF THE STATE FOR ANY PURPOSE FOR WHICH THE DEPOSIT OF BONDS
29 OR OTHER OBLIGATIONS OF THE STATE IS NOW OR MAY HEREAFTER BE
30 AUTHORIZED BY LAW.

1 (H) IN THE EVENT OF DISSOLUTION OF THE TRANSIT AUTHORITY, THE
2 TITLE TO ALL PROPERTY OF THE TRANSIT AUTHORITY SHALL REVERT TO
3 MONTGOMERY COUNTY.

4 (I) THE TRANSIT AUTHORITY IS A "CONSTITUTED AUTHORITY" WITHIN
5 THE MEANING OF THE INTERNAL REVENUE CODE AND THE RELEVANT
6 REGULATIONS, RULINGS, AND PROCEDURES.

7 (J) (1) THE GOVERNING BODY OF MONTGOMERY COUNTY MAY
8 TRANSFER TO THE TRANSIT AUTHORITY A COUNTY TRANSIT FUNCTION
9 PERFORMED BY THE COUNTY AT THE TIME OF THE TRANSFER, TOGETHER WITH THE
10 RELATED ASSETS AND OBLIGATIONS.

11 (2) IF THE GOVERNING BODY OF MONTGOMERY COUNTY TRANSFERS
12 TO THE TRANSIT AUTHORITY A COUNTY TRANSIT FUNCTION PERFORMED BY A
13 COUNTY EMPLOYEE, THE GOVERNING BODY SHALL PROVIDE, BY LOCAL LAW:

14 (I) FOR THE TRANSFER TO THE TRANSIT AUTHORITY OF ANY
15 EMPLOYEE THAT PERFORMED A COUNTY TRANSIT FUNCTION;

16 (II) THAT ANY EMPLOYEE WHO DECLINES THE TRANSFER MAY
17 ELECT TO TREAT THE TRANSFER AS A REDUCTION IN FORCE UNDER APPLICABLE
18 PROVISIONS OF THE COUNTY'S MERIT SYSTEM LAW, PERSONNEL REGULATIONS, AND
19 COLLECTIVE BARGAINING AGREEMENTS; AND

20 (III) THAT ANY EMPLOYEE WHO ACCEPTS THE TRANSFER SHALL
21 RETAIN THE RIGHT TO:

22 1. RETAIN CURRENT PAY;

23 2. RETAIN ACCRUED LEAVE;

24 3. PARTICIPATE IN THE HEALTH, DENTAL, VISION, AND
25 LIFE INSURANCE COMPONENT PLANS OF THE COUNTY'S GROUP INSURANCE
26 BENEFIT PLAN, SUBJECT TO THE TRANSIT AUTHORITY TAKING THE NECESSARY
27 ACTIONS TO BECOME A PARTICIPATING AGENCY IN THE COUNTY'S GROUP
28 INSURANCE BENEFIT PLAN;

1 4. CONTINUE TO PARTICIPATE IN THE TRANSFERRED
2 EMPLOYEE'S MANDATORY RETIREMENT PLAN, SUBJECT TO THE TRANSIT
3 AUTHORITY TAKING THE NECESSARY ACTIONS TO BECOME A PARTICIPATING
4 AGENCY; AND

5 5. RETAIN ALL RIGHTS UNDER THE COUNTY'S MERIT
6 SYSTEM UNTIL THE TRANSIT AUTHORITY ADOPTS PERSONNEL REGULATIONS.

7 (K) (1) IF THE GOVERNING BODY OF MONTGOMERY COUNTY TRANSFERS
8 TO THE TRANSIT AUTHORITY A COUNTY TRANSIT FUNCTION PERFORMED BY THE
9 COUNTY, IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (J) OF THIS SECTION,
10 THE GOVERNING BODY SHALL PROVIDE BY LOCAL LAW IN CONNECTION WITH A
11 TRANSIT AUTHORITY EMPLOYEE WHO IS A MEMBER OF A COLLECTIVE BARGAINING
12 UNIT:

13 (I) THAT THE TRANSIT AUTHORITY SHALL ASSUME THE
14 OBLIGATIONS OF THE EMPLOYER UNDER ANY EXTANT COLLECTIVE BARGAINING
15 AGREEMENT FOR ANY OF THE TRANSFERRED COUNTY EMPLOYEES AND THE
16 AGREEMENT SHALL REMAIN IN EFFECT FOR THE REMAINING TERM OF THAT
17 AGREEMENT;

18 (II) FOR COLLECTIVE BARGAINING FOR TRANSIT AUTHORITY
19 EMPLOYEES WITH ARBITRATION OR OTHER IMPASSE RESOLUTION PROCEDURES
20 WITH AUTHORIZED REPRESENTATIVES OF TRANSIT AUTHORITY EMPLOYEES; AND

21 (III) THAT THE AUTHORIZED REPRESENTATIVE OF TRANSIT
22 AUTHORITY EMPLOYEES SHALL REMAIN THE AUTHORIZED REPRESENTATIVE OF
23 THOSE EMPLOYEES UNLESS DECERTIFIED BY EMPLOYEES UNDER THE COLLECTIVE
24 BARGAINING LAW ENACTED UNDER THIS SUBSECTION.

25 (2) ANY LOCAL LAW ENACTED UNDER PARAGRAPH (1) OF THIS
26 SUBSECTION SHALL:

27 (I) PROHIBIT STRIKES OR WORK STOPPAGES FOR TRANSIT
28 AUTHORITY EMPLOYEES; AND

29 (II) BE SUBSTANTIALLY SIMILAR TO §§ 33-101 THROUGH
30 33-112 OF THE MONTGOMERY COUNTY CODE.

1 (L) (1) THE MARYLAND DEPARTMENT OF TRANSPORTATION SHALL
2 GRANT TO THE TRANSIT AUTHORITY THE RIGHT TO USE RIGHTS-OF-WAY ON STATE
3 HIGHWAYS AND ROADS IN CONNECTION WITH COUNTY TRANSIT FUNCTIONS,
4 SUBJECT TO REASONABLE CONDITIONS THAT ARE NEGOTIATED IN GOOD FAITH
5 BETWEEN THE TRANSIT AUTHORITY AND THE DEPARTMENT.

6 (2) THE DEPARTMENT SHALL COOPERATE IN THE DESIGN AND
7 CONSTRUCTION OF COUNTY TRANSIT FACILITIES.

8 (3) IF THE GOVERNING BODY OF MONTGOMERY COUNTY TRANSFERS
9 TO THE TRANSIT AUTHORITY OPERATION OF ITS SCHEDULED LOCAL BUS SERVICE,
10 THE TRANSIT AUTHORITY SHALL BE ENTITLED TO RECEIVE MONTGOMERY
11 COUNTY'S ANNUAL GRANT FOR ELIGIBLE LOCAL BUS SERVICE UNDER § 10-207 OF
12 THE TRANSPORTATION ARTICLE.

13 (M) THE TRANSIT AUTHORITY SHALL BE SUBJECT TO THE MONTGOMERY
14 COUNTY PUBLIC ETHICS LAW.

15 (N) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO EFFECT ITS
16 PURPOSES.

17 Article – Courts and Judicial Proceedings

18 5-301.

19 (d) "Local government" means:

20 (28) The nonprofit corporation serving as the local public transportation
21 authority for Garrett County pursuant to a contract or memorandum of understanding with
22 Garrett County (Garrett County Community Action Committee, Inc.); [and]

23 (29) The nonprofit corporation serving as the industrial development
24 authority of Carroll County established under Title 12, Subtitle 1 of the Economic
25 Development Article; AND

26 (30) THE MONTGOMERY COUNTY TRANSIT AUTHORITY.

5lr0866

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
2 1, 2015.

AGENDA ITEM #1
February 2, 2015

MEMORANDUM

January 30, 2015

TO: County Council
FROM: ⁶⁶ Glenn Orlin, Deputy Council Administrator
SUBJECT: MC 24-15, Montgomery County – Transit Authority

The subject bill, filed on January 21, would enable the Council to establish an Independent Transit Authority (ITA). The bill is attached. The House Delegation will be holding a public hearing on Friday evening, January 30 at 6:00 pm in the Council Office Building's 3rd Floor Hearing Room. This memorandum is being prepared prior to that hearing; Council staff will summarize the testimony at Monday's State Legislative Program session.

The concept. Here are some thoughts on whether an ITA makes sense organizationally:

One of the arguments for an ITA is that the Division of Transit Services (DTS) is only one of five divisions within the county Department of Transportation (DOT), so not enough focus can be given to transit. However, DTS represents 63% of the operating budget and 72% of the employees (measured as FTEs) of DOT, so by these measures DOT is primarily a transit department now. If the Division of Parking Services is absorbed into an ITA (a possible option being explored by Executive Branch staff), then these percentages would go up to 77% and 76%, respectively.

Furthermore, unlike heavy rail (Metrorail) and light rail, Bus Rapid Transit (BRT) is not a separate "business" that has its own expertise. Many of the buses will be larger, but they are still buses that—with a bit more training—can be operated and maintained by DTS.

Part of the concept is to bring the transit portion of Fleet Services under the ITA. Another alternative is simply to return Fleet Services to DOT, where it is existed for decades before the County Executive moved it to the Department of General Services in 2007. More than 80% of Fleet Services's activities and budget are for maintaining DOT equipment: buses and highway services equipment (front-end loaders, dump trucks, etc.).

Another argument put forward for the ITA is that DOT "is not currently empowered, structured, or equipped to manage a long-term and large scale program of transit investment for the county" (January 2015 consultant report, p. 5). However, the BRT system will not be built by the ITA: it will be built mainly under the auspices of the State Highway Administration (SHA), since—with the exception

of the Corridor Cities Transitway—nearly all of the rest of the system is within SHA right-of-way and under its jurisdiction. There is no difference between running buses in an HOV lane and running them in a fully or partially dedicated bus lane, for example.

Having transit in an entity separate from DOT means that the institutional link between transit and traffic engineering will be severed. This link is critical, since so much of the effectiveness of BRT depends on traffic signal prioritization (and, perhaps, preemption) which will be much harder to accomplish if not under the same management.

The money. The central reason for an ITA is as a means to raise more funding by taking the Mass Transit Tax out from under the property tax cap in the Charter, allowing that tax to be raised significantly to support revenue bonds issued by the authority. The Mass Transit Tax—a property tax levied countywide, the proceeds of which can be used only for transit programs—is currently set at a rate of 4¢/\$100 and is projected to raise about \$69 million in FY15. If out from under the Charter limit the Council could raise the tax rate significantly by a majority vote; under the Charter provision all nine Councilmembers would be required to approve such an increase.

Under SB 828 (Senator Madaleno's bill) from several years ago, the County already has authority to enact a special taxing district to raise money to pay for the *capital* costs of transportation improvements—including BRT—which also is exempt from the Charter limit. Under the Executive's proposal the Mass Transit Tax would ultimately be increased to cover this cost. There's no difference whether this money is raised through an ITA tax or a countywide special district tax. In both cases the Council would be acting on the tax, and would get the full credit or blame for that action.

It is likely that revenue bonds issued by the ITA would have a lower rating and a higher interest rate than G.O. bonds backed by the full faith and credit of the County, not including the added cost of the issuances themselves. Funding BRT with revenue bonds issued by the ITA would cost more to County taxpayers than by G.O. bonds.

The only substantive difference is how *operating* costs are funded. First of all, it is uncertain how much more it will cost to operate the BRT system, since it would replace many of the existing—and less cost-effective—Ride On routes. Second, creating a separate authority will increase cost, since both the remainder of DOT and the new authority would have their own management and overhead costs that County taxpayers would have to support.

In 2013 Senator Madaleno sponsored a SB707 that would have amended SB828 to include property tax revenue collected for transportation operating costs to be exempt from local Charter limits. It also allowed for differential tax rates. The bill died in the Budget and Taxation Committee. In 2014 SB 627, identical to SB707, was introduced by Senators Madaleno and Montgomery (and Senators Currie and Jones-Rodwell), and HB 1279 was cross-filed in the House by Delegates Hixson, Barnes, Barve, Carr, Cullison, Gutierrez, Hucker, Luedtke, Robinson, Simmons, Waldstreicher, and Zucker. These bills died in the Budget and Taxation Committee and Ways and Means Committee, respectively. However, all three bills were, like SB828, statewide bills; given the strength of sponsorship among the county's Senators and Delegates, one wonders whether a Montgomery County-only bill might have been successful, especially one that contained the operating cost funding exemption but not the rate differential provision.

Council and Executive authority. As to the Council's current authority re transit, here's what it would retain under the proposal:

- Approving capital projects in the CIP.
- Approving the countywide Mass Transit Tax.

And here's what it would cede to the ITA:

- Setting transit fares.
- Setting parking fees and fines, if parking is included with the authority.
- Approving the operating budget.
- Approving the capital appropriation for CIP projects. (This is not very important; the appropriations stem from the CIP projects, which the Council would still have authority to approve.)
- Deciding the routes and schedules of the transit service. When it reviews the budget, the Council has regularly added and (in bad times) deleted specific services on specific routes.
- Less influence when intervening on constituent concerns. Now, Councilmembers work directly with Executive staff to work out these concerns. But since the ITA would be run by appointed rather than elected officials, they would naturally be under somewhat less pressure to make changes in response to Councilmembers.

The Executive would be ceding even more authority. Now his DOT establishes Ride On routes and schedules, works with WMATA and MDOT to develop Metrobus routes and schedules, proposes fares, and proposes taxes. Although the Council now makes the ultimate decisions on fares and taxes, it usually approves the Executive's recommendations with, at most, minor changes. Bonds would be issued by the ITA, not the Executive's Department of Finance. With an ITA, the Executive's only role would be to appoint the ITA's five-member board of directors, subject to the Council's confirmation.

Collective bargaining. The bill would have the Montgomery County Government Employees Organization (MCGEO) continue to represent the employees under the ITA (without a new election) and require the Council to enact a collective bargaining law for these employees that is "substantially similar to Sections 33-101-112 of the Code" (County Employee Bargaining Law). This likely would require a provision for binding arbitration of impasses between MCGEO and the ITA. However, unlike with County employees, the Council would not have a role in rejecting an arbitrator award that requires an appropriation of funds. This could, potentially, leave the ITA stuck with an unfavorable arbitration award and consequently leave the Council with a required tax rate to fund it.

Differential tax rates. During the Council's State Legislation meeting on January 26, the idea of differential property tax rates between commercial and residential property was suggested. While that can certainly be done with a change in State law, the Office of Intergovernmental Relations (OIR) believes it would likely be a provision that would attract strong opposition. Delegate Carr put in bills several years ago to give counties the authority to establish differential tax rates, and they ran into huge opposition.

There are other ways to accomplish the same goal without attracting that opposition. The County currently has a de facto property tax differential through the TG §9-221 tax credit. Under this section of the Code, a county with an income tax rate of 2.6% or higher can grant a property tax credit to

owner-occupied residential properties. Montgomery County does this, granting a \$692 credit on property tax bills. This credit has the additional benefit of being progressive – the amount is the same regardless of whether the property is valued at \$100,000 or \$100,000,000. If current functions, such as Ride On, are transferred to the authority, the Charter limit will need to be rebased. This can be done through adjusting the §9-221 credit as well as adjusting the general County property tax rate. This could provide homeowners with relief without raising additional opposition. Low income homeowners and renters would also automatically be compensated through the Homeowners and Renters Tax Credit programs. The transit tax would be included in the amount of tax used to calculate the Homeowners Tax Credit, and as rents are increased to reflect the additional tax, it would similarly flow through the Renters Tax Credit (where 15% of rent is assumed to be the property tax).

Another way would be to impose a “use and occupancy” excise tax, where the tax is charged based not on the value of the property but on the extent to which the property is used (e.g. the number of days each year in which someone is working in their business while physically located on the premises). Prince George’s County imposed some use and occupancy taxes to get around its charter limit, and they were upheld as excise taxes.

Yet another option would be to establish two tax districts: one comprising areas within walking distance (say, ½-mile) of a major transit station that would have a relatively high tax rate, and the other covering the rest of the county that would have a much lower tax rate. The distinction would be between those areas that would gain the most utility from rapid transit and those that would also benefit, but to a lesser degree. The major transit station areas are primarily commercial, but would have some residences, while the balance of the county is primarily residential but with some commercial. *Note that any of these options are possible whether there is an ITA or not.*

Amendments to MC 24-15. Overall, Council staff does not concur with the desirability of creating an ITA. However, despite the critique above, Council staff believes more vetting by elected officials and the public is needed. Therefore, the Council could support a bill, but with amendments noted below (to give the Council more flexibility to craft an acceptable local bill) and with the understanding that the Council may very well decide ultimately not to create an ITA. The suggested amendments are:

- Section (A)(7), ©4: Change the definition of a special taxing district to allow for the possibility more than one district, where a district might not have to encompass the entire county.
- Section (B)(6)(II), ©6: Amend so that the County may (not may not) require the ITA to submit its budget to the County for approval.
- Sections (J) and (K), ©8-9: Delete. The relationship between the ITA and its future employees should be worked out in the local law.

An even better approach would be to shelve the bill for now, to work on a comprehensive solution over the next six months, and then file a revised State bill (if necessary) to help implement that solution. It is difficult to imagine that an ITA—or any solution—could be in place before FY17, so taking this time would be a good idea. No BRT line will be ready for final design or construction in FY16: the US 29 and MD 355 BRT conceptual planning studies will not be completed until sometime in FY17, and the MD 586 BRT and Corridor Cities Transitway will not be in final design until then.

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Phelps

Typed by: Francina

Stored - 01/21/15

Proofread by _____

Checked by _____

By: Montgomery County Delegation

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County - Transit Authority**3 **MC 24-15**

4 FOR the purpose of authorizing the governing body of Montgomery County to create, by
5 local law, a Transit Authority to perform county transit functions as an
6 instrumentality of the county and body corporate and politic and governed by a
7 certain board; authorizing the governing body, by local law, to create a special taxing
8 district to finance the cost of county transit functions, impose a certain special tax,
9 specify the organization of the Transit Authority, specify certain powers of the
10 Transit Authority, establish a certain budget process for the Transit Authority, and
11 specify certain other matters related to the Transit Authority; providing that
12 provisions of the Montgomery County Charter do not apply to the Transit Authority
13 except under certain circumstances; providing that a certain tax limitation does not
14 apply to certain revenue raised for certain purposes; authorizing the Transit
15 Authority to provide for the issuance of certain revenue bonds for certain purposes,
16 subject to certain conditions and exempt from certain provisions of law; providing for
17 the tax exempt status of certain bonds; providing for reversion of certain title to
18 property under certain circumstances; declaring the Transit Authority to be a
19 "constituted authority" for certain purposes; authorizing the governing body to
20 transfer certain county transit functions to the Transit Authority; requiring the
21 governing body to provide by local law certain provisions relating to certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 employees under certain circumstances; requiring the Maryland Department of
2 Transportation to grant to the Transit Authority certain rights; requiring that the
3 Transit Authority be entitled to receive certain funds under certain circumstances;
4 requiring the Transit Authority to be subject to the Montgomery County Public
5 Ethics Law; defining certain terms; altering the definition of "local government" as
6 it relates to the Local Government Tort Claims Act; providing for the construction of
7 certain provisions of this Act; and generally relating to the creation of a Transit
8 Authority for Montgomery County.

9 BY adding to

10 Article – Local Government

11 Section 21-703

12 Annotated Code of Maryland

13 (2013 Volume and 2014 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Courts and Judicial Proceedings

16 Section 5-301(d)(28) and (29)

17 Annotated Code of Maryland

18 (2013 Replacement Volume and 2014 Supplement)

19 BY adding to

20 Article – Courts and Judicial Proceedings

21 Section 5-301(d)(30)

22 Annotated Code of Maryland

23 (2013 Replacement Volume and 2014 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

25 That the Laws of Maryland read as follows:

26 **Article – Local Government**

27 **21-703.**

28 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
29 INDICATED.

1 (2) "BOND" MEANS A SPECIAL OBLIGATION BOND, NOTE,
2 COMMERCIAL PAPER, OR ANY OTHER SIMILAR INSTRUMENT ISSUED BY
3 MONTGOMERY COUNTY OR THE TRANSIT AUTHORITY, AS THE CONTEXT MAY
4 INDICATE, UNDER THIS SECTION.

5 (3) "COST" INCLUDES ANY EXPENSE NECESSARY OR INCIDENT TO
6 THE PLANNING, DESIGN, FINANCING, ACQUISITION, CONSTRUCTION,
7 RECONSTRUCTION, RENOVATION, MAINTENANCE, EQUIPPING, AND OPERATION OF
8 COUNTY TRANSIT FUNCTIONS.

9 (4) "COUNTY TAX LIMITATION" MEANS A PROVISION OF THE
10 MONTGOMERY COUNTY CHARTER THAT LIMITS:

11 (I) THE MAXIMUM PROPERTY TAX RATE THAT THE COUNTY MAY
12 IMPOSE; OR

13 (II) THE RATE OF GROWTH OF COUNTY PROPERTY TAX
14 REVENUES.

15 (5) "COUNTY TRANSIT FUNCTIONS" INCLUDES, FOR MONTGOMERY
16 COUNTY, THE PLANNING, DESIGN, FINANCING, ACQUISITION, CONSTRUCTION,
17 RECONSTRUCTION, RENOVATION, MAINTENANCE, EQUIPPING, AND OPERATION OF
18 ANY ONE OR MORE OR COMBINATION OF TRACKS, RIGHTS-OF-WAY, BRIDGES,
19 TUNNELS, SUBWAYS, ROLLING STOCK, STATIONS, TERMINALS, PORTS, PARKING
20 AREAS, PARKING STRUCTURES, EQUIPMENT, FIXTURES, BUILDING STRUCTURES,
21 OTHER REAL OR PERSONAL PROPERTY, OR SERVICES INCIDENTAL TO OR USEFUL OR
22 DESIGNED FOR USE IN CONNECTION WITH THE RENDERING OF TRANSIT SERVICE BY
23 ANY MEANS, INCLUDING RAIL, BUS, MOTOR VEHICLE, OR OTHER MODE OF
24 TRANSPORTATION.

25 (6) (I) "SPECIAL TAX" MEANS AN AD VALOREM PROPERTY TAX, AN
26 EXCISE TAX, AN ASSESSMENT, A FEE, OR A CHARGE IMPOSED IN A SPECIAL TAXING
27 DISTRICT.

28 (II) "SPECIAL TAX" DOES NOT INCLUDE AN AD VALOREM
29 PROPERTY TAX, AN EXCISE TAX, AN ASSESSMENT, A FEE, OR A CHARGE IMPOSED
30 UNDER CHAPTER 20A OF THE MONTGOMERY COUNTY CODE.

1 (7) "SPECIAL TAXING DISTRICT" MEANS A SINGLE GEOGRAPHIC AREA
2 THAT INCLUDES THE ENTIRE COUNTY.

3 (8) "TRANSIT AUTHORITY" MEANS THE TRANSIT AUTHORITY
4 CREATED UNDER SUBSECTION (B)(1) OF THIS SECTION.

5 (B) THE GOVERNING BODY OF MONTGOMERY COUNTY, BY LOCAL LAW,
6 MAY:

7 (1) CREATE A TRANSIT AUTHORITY TO PERFORM COUNTY TRANSIT
8 FUNCTIONS THAT IS:

9 (i) AN INSTRUMENTALITY OF MONTGOMERY COUNTY THAT
10 MAY SUE AND BE SUED AND IS A BODY CORPORATE AND POLITIC; AND

11 (ii) GOVERNED BY A BOARD COMPOSED OF FIVE MEMBERS ALL
12 OF WHOM SHALL BE APPOINTED BY THE COUNTY EXECUTIVE SUBJECT TO
13 CONFIRMATION BY THE COUNTY COUNCIL;

14 (2) CREATE A SPECIAL TAXING DISTRICT TO FINANCE THE COST OF
15 COUNTY TRANSIT FUNCTIONS;

16 (3) IMPOSE A SPECIAL TAX;

17 (4) SPECIFY THE ORGANIZATION OF THE TRANSIT AUTHORITY;

18 (5) SPECIFY THE POWERS NECESSARY AND PROPER FOR THE
19 TRANSIT AUTHORITY TO EXERCISE ITS ASSIGNED COUNTY TRANSIT FUNCTIONS,
20 INCLUDING THE POWER TO:

21 (i) INCUR DEBT, INCLUDING ISSUING REVENUE BONDS,
22 COMMERCIAL PAPER, OR OTHER SIMILAR INSTRUMENTS, INCLUDING REVENUE
23 BONDS ISSUED TO REFUND OUTSTANDING DEBT INSTRUMENTS, SECURED BY
24 REVENUES RECEIVED BY THE TRANSIT AUTHORITY AND OTHER FUNDS THAT THE
25 COUNTY OR ANY OTHER GOVERNMENTAL OR PRIVATE PERSON MAY MAKE
26 AVAILABLE FOR THAT PURPOSE;

1 (II) ACQUIRE REAL AND PERSONAL PROPERTY AND INTERESTS
2 IN REAL AND PERSONAL PROPERTY LOCATED IN AND OUTSIDE THE SPECIAL TAXING
3 DISTRICT AND PLEDGE, MORTGAGE, ENCUMBER, GRANT CONCESSIONS IN
4 CONNECTION WITH, SELL, LEASE, TRANSFER, OR CONVEY ANY INTEREST IN ITS REAL
5 AND PERSONAL PROPERTY TO THE COUNTY OR ANY PERSON;

6 (III) ACQUIRE PROPERTY BY CONDEMNATION IN ACCORDANCE
7 WITH TITLE 12 OF THE REAL PROPERTY ARTICLE, IF THE ACQUISITION OF THE
8 PROPERTY IS NEEDED TO IMPLEMENT THE CAPITAL IMPROVEMENT PROGRAM OF
9 THE TRANSIT AUTHORITY;

10 (IV) ENTER INTO CONTRACTS WITH PERSONS AND OTHER
11 GOVERNMENTAL UNITS, INCLUDING UNITS OF FEDERAL, STATE, AND LOCAL
12 GOVERNMENTS;

13 (V) ADOPT POLICIES AND PROCEDURES RELATING TO THE
14 PROCUREMENT OF GOODS AND SERVICES;

15 (VI) ADOPT POLICIES, PROCEDURES, POSITION DESCRIPTIONS,
16 AND COMPENSATION PLANS RELATING TO THE RECRUITMENT, HIRING, TERMS OF
17 EMPLOYMENT, DISCIPLINE, RETENTION, AND TERMINATION OF EMPLOYEES;

18 (VII) ENTER INTO AGREEMENTS AND ESTABLISH AND
19 PARTICIPATE IN VENTURES AND PUBLIC-PRIVATE PARTNERSHIPS IN WHICH THE
20 TRANSIT AUTHORITY, PRIVATE PARTIES, OTHER GOVERNMENTAL UNITS, AND
21 INSTRUMENTALITIES OF OTHER GOVERNMENTAL UNITS MAKE INVESTMENTS,
22 PROVIDE LOANS, AND SHARE FACILITIES AND OPERATIONS; AND

23 (VIII) RECEIVE AND MANAGE FUNDS, ACCEPT GRANTS AND GIFTS
24 FROM PUBLIC AND PRIVATE PARTIES, AND INVEST FUNDS;

25 (6) ESTABLISH A BUDGET PROCESS FOR THE TRANSIT AUTHORITY
26 THAT:

27 (I) MAY INCLUDE A REQUIREMENT THAT THE TRANSIT
28 AUTHORITY SUBMIT A 6-YEAR CAPITAL IMPROVEMENT PROGRAM TO THE COUNTY
29 FOR APPROVAL AND THAT THE TRANSIT AUTHORITY'S CAPITAL AND OPERATING
30 BUDGET BE CONSISTENT WITH THE CAPITAL IMPROVEMENT PROGRAM AND THE
31 COUNTY'S APPLICABLE MASTER PLANS; AND

1 (II) MAY NOT REQUIRE THE TRANSIT AUTHORITY TO SUBMIT
2 ITS CAPITAL OR ITS OPERATING BUDGET TO THE COUNTY FOR APPROVAL; AND

3 (7) SPECIFY ANY OTHER MATTERS THE COUNTY DEEMS NECESSARY
4 AND PROPER RELATING TO THE TRANSIT AUTHORITY AS THE COUNTY MAY
5 DETERMINE.

6 (C) PROVISIONS OF THE MONTGOMERY COUNTY CHARTER DO NOT APPLY
7 TO THE TRANSIT AUTHORITY, UNLESS THE GOVERNING BODY OF MONTGOMERY
8 COUNTY EXPRESSLY PROVIDES BY LAW THAT A CHARTER PROVISION APPLIES TO
9 THE TRANSIT AUTHORITY.

10 (D) A MONTGOMERY COUNTY TAX LIMITATION THAT WOULD OTHERWISE
11 APPLY TO AD VALOREM OR SPECIAL TAXES IMPOSED IN A SPECIAL TAXING DISTRICT
12 DOES NOT APPLY TO REVENUE, INCLUDING TAX REVENUE, RAISED FOR THE
13 PURPOSE OF PAYING THE COST OF COUNTY TRANSIT FUNCTIONS.

14 (E) (1) NOTWITHSTANDING ANY OTHER PUBLIC GENERAL LAW, PUBLIC
15 LOCAL LAW, OR THE MONTGOMERY COUNTY CHARTER, THE TRANSIT AUTHORITY,
16 WITH THE APPROVAL OF THE GOVERNING BODY OF MONTGOMERY COUNTY, MAY
17 PROVIDE FOR THE ISSUANCE OF REVENUE BONDS TO FINANCE THE COST OF
18 CAPITAL EXPENSES OF COUNTY TRANSIT FUNCTIONS PROVIDED DIRECTLY OR
19 INDIRECTLY BY THE TRANSIT AUTHORITY, FOR WHICH THE PRINCIPAL, INTEREST,
20 AND ANY PREMIUM IS SECURED BY A SPECIAL TAX AND OTHER FUNDS THAT MAY BE
21 LEGALLY MADE AVAILABLE FOR THAT PURPOSE.

22 (2) REVENUE BONDS ISSUED UNDER THIS SUBSECTION ARE SPECIAL
23 OBLIGATIONS OF THE TRANSIT AUTHORITY AND DO NOT CONSTITUTE A GENERAL
24 OBLIGATION DEBT OF THE COUNTY OR A PLEDGE OF THE COUNTY'S FULL FAITH AND
25 CREDIT OR GENERAL TAXING POWER.

26 (3) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER
27 THIS SUBSECTION MAY BE SOLD IN ANY MANNER, EITHER AT PUBLIC OR PRIVATE
28 SALE, AND ON TERMS THAT THE TRANSIT AUTHORITY CONSIDERS BEST.

29 (4) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER
30 THIS SUBSECTION ARE NOT SUBJECT TO §§ 19-205 AND 19-206 OF THIS ARTICLE.

1 (5) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER
2 THIS SUBSECTION AND THE TRANSFER OF, INTEREST PAYABLE ON, AND ANY INCOME
3 DERIVED FROM, INCLUDING ANY PROFIT REALIZED ON THE SALE OR EXCHANGE OF,
4 REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY UNDER THIS SUBSECTION
5 ARE EXEMPT FROM TAXATION BY THE STATE, THE COUNTY, OR A MUNICIPALITY.

6 (6) IN ADDITION TO THE SPECIAL TAXES, REVENUE BONDS ISSUED BY
7 THE TRANSIT AUTHORITY UNDER THIS SECTION MAY BE SECURED BY OTHER
8 REVENUES OR PROPERTY OF THE TRANSIT AUTHORITY AND OTHER FUNDS THAT
9 MAY BE LEGALLY MADE AVAILABLE FOR THAT PURPOSE.

10 (F) ANY BONDS ISSUED BY THE TRANSIT AUTHORITY AND THE TRANSFER
11 OF, INTEREST PAYABLE ON, AND ANY INCOME DERIVED FROM, INCLUDING ANY
12 PROFIT REALIZED ON THE SALE OR EXCHANGE OF, ANY BONDS ISSUED BY THE
13 TRANSIT AUTHORITY ARE EXEMPT FROM TAXATION BY THE STATE, THE COUNTY,
14 OR A MUNICIPALITY.

15 (G) (1) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY
16 AUTHORIZED BY THIS SECTION ARE HEREBY MADE SECURITIES IN WHICH ALL
17 PUBLIC OFFICERS AND PUBLIC AGENCIES OF THE STATE AND ITS POLITICAL
18 SUBDIVISIONS, AND ALL BANKS, TRUST COMPANIES, SAVINGS AND LOAN
19 ASSOCIATIONS, INVESTMENT COMPANIES, AND OTHERS CARRYING ON A BANKING
20 BUSINESS, ALL INSURANCE COMPANIES AND INSURANCE ASSOCIATIONS AND
21 OTHERS CARRYING ON A BANKING BUSINESS, ALL ADMINISTRATORS, EXECUTORS,
22 GUARDIANS, TRUSTEES AND OTHER FIDUCIARIES, AND ALL OTHER PERSONS MAY
23 LEGALLY AND PROPERLY INVEST FUNDS, INCLUDING CAPITAL, UNDER THE
24 CONTROL OF OR BELONGING TO THE TRANSIT AUTHORITY.

25 (2) REVENUE BONDS ISSUED BY THE TRANSIT AUTHORITY ARE
26 HEREBY MADE SECURITIES THAT MAY PROPERLY AND LEGALLY BE DEPOSITED WITH
27 AND RECEIVED BY ANY STATE OR MUNICIPAL OFFICER OR ANY UNIT OR POLITICAL
28 SUBDIVISION OF THE STATE FOR ANY PURPOSE FOR WHICH THE DEPOSIT OF BONDS
29 OR OTHER OBLIGATIONS OF THE STATE IS NOW OR MAY HEREAFTER BE
30 AUTHORIZED BY LAW.

1 (H) IN THE EVENT OF DISSOLUTION OF THE TRANSIT AUTHORITY, THE
2 TITLE TO ALL PROPERTY OF THE TRANSIT AUTHORITY SHALL REVERT TO
3 MONTGOMERY COUNTY.

4 (I) THE TRANSIT AUTHORITY IS A "CONSTITUTED AUTHORITY" WITHIN
5 THE MEANING OF THE INTERNAL REVENUE CODE AND THE RELEVANT
6 REGULATIONS, RULINGS, AND PROCEDURES.

7 (J) (1) THE GOVERNING BODY OF MONTGOMERY COUNTY MAY
8 TRANSFER TO THE TRANSIT AUTHORITY A COUNTY TRANSIT FUNCTION
9 PERFORMED BY THE COUNTY AT THE TIME OF THE TRANSFER, TOGETHER WITH THE
10 RELATED ASSETS AND OBLIGATIONS.

11 (2) IF THE GOVERNING BODY OF MONTGOMERY COUNTY TRANSFERS
12 TO THE TRANSIT AUTHORITY A COUNTY TRANSIT FUNCTION PERFORMED BY A
13 COUNTY EMPLOYEE, THE GOVERNING BODY SHALL PROVIDE, BY LOCAL LAW:

14 (I) FOR THE TRANSFER TO THE TRANSIT AUTHORITY OF ANY
15 EMPLOYEE THAT PERFORMED A COUNTY TRANSIT FUNCTION;

16 (II) THAT ANY EMPLOYEE WHO DECLINES THE TRANSFER MAY
17 ELECT TO TREAT THE TRANSFER AS A REDUCTION IN FORCE UNDER APPLICABLE
18 PROVISIONS OF THE COUNTY'S MERIT SYSTEM LAW, PERSONNEL REGULATIONS, AND
19 COLLECTIVE BARGAINING AGREEMENTS; AND

20 (III) THAT ANY EMPLOYEE WHO ACCEPTS THE TRANSFER SHALL
21 RETAIN THE RIGHT TO:

22 1. RETAIN CURRENT PAY;

23 2. RETAIN ACCRUED LEAVE;

24 3. PARTICIPATE IN THE HEALTH, DENTAL, VISION, AND
25 LIFE INSURANCE COMPONENT PLANS OF THE COUNTY'S GROUP INSURANCE
26 BENEFIT PLAN, SUBJECT TO THE TRANSIT AUTHORITY TAKING THE NECESSARY
27 ACTIONS TO BECOME A PARTICIPATING AGENCY IN THE COUNTY'S GROUP
28 INSURANCE BENEFIT PLAN;

1 4. CONTINUE TO PARTICIPATE IN THE TRANSFERRED
2 EMPLOYEE'S MANDATORY RETIREMENT PLAN, SUBJECT TO THE TRANSIT
3 AUTHORITY TAKING THE NECESSARY ACTIONS TO BECOME A PARTICIPATING
4 AGENCY; AND

5 5. RETAIN ALL RIGHTS UNDER THE COUNTY'S MERIT
6 SYSTEM UNTIL THE TRANSIT AUTHORITY ADOPTS PERSONNEL REGULATIONS.

7 (K) (1) IF THE GOVERNING BODY OF MONTGOMERY COUNTY TRANSFERS
8 TO THE TRANSIT AUTHORITY A COUNTY TRANSIT FUNCTION PERFORMED BY THE
9 COUNTY, IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (J) OF THIS SECTION,
10 THE GOVERNING BODY SHALL PROVIDE BY LOCAL LAW IN CONNECTION WITH A
11 TRANSIT AUTHORITY EMPLOYEE WHO IS A MEMBER OF A COLLECTIVE BARGAINING
12 UNIT:

13 (I) THAT THE TRANSIT AUTHORITY SHALL ASSUME THE
14 OBLIGATIONS OF THE EMPLOYER UNDER ANY EXTANT COLLECTIVE BARGAINING
15 AGREEMENT FOR ANY OF THE TRANSFERRED COUNTY EMPLOYEES AND THE
16 AGREEMENT SHALL REMAIN IN EFFECT FOR THE REMAINING TERM OF THAT
17 AGREEMENT;

18 (II) FOR COLLECTIVE BARGAINING FOR TRANSIT AUTHORITY
19 EMPLOYEES WITH ARBITRATION OR OTHER IMPASSE RESOLUTION PROCEDURES
20 WITH AUTHORIZED REPRESENTATIVES OF TRANSIT AUTHORITY EMPLOYEES; AND

21 (III) THAT THE AUTHORIZED REPRESENTATIVE OF TRANSIT
22 AUTHORITY EMPLOYEES SHALL REMAIN THE AUTHORIZED REPRESENTATIVE OF
23 THOSE EMPLOYEES UNLESS DECERTIFIED BY EMPLOYEES UNDER THE COLLECTIVE
24 BARGAINING LAW ENACTED UNDER THIS SUBSECTION.

25 (2) ANY LOCAL LAW ENACTED UNDER PARAGRAPH (1) OF THIS
26 SUBSECTION SHALL:

27 (I) PROHIBIT STRIKES OR WORK STOPPAGES FOR TRANSIT
28 AUTHORITY EMPLOYEES; AND

29 (II) BE SUBSTANTIALLY SIMILAR TO §§ 33-101 THROUGH
30 33-112 OF THE MONTGOMERY COUNTY CODE.

1 (L) (1) THE MARYLAND DEPARTMENT OF TRANSPORTATION SHALL
2 GRANT TO THE TRANSIT AUTHORITY THE RIGHT TO USE RIGHTS-OF-WAY ON STATE
3 HIGHWAYS AND ROADS IN CONNECTION WITH COUNTY TRANSIT FUNCTIONS,
4 SUBJECT TO REASONABLE CONDITIONS THAT ARE NEGOTIATED IN GOOD FAITH
5 BETWEEN THE TRANSIT AUTHORITY AND THE DEPARTMENT.

6 (2) THE DEPARTMENT SHALL COOPERATE IN THE DESIGN AND
7 CONSTRUCTION OF COUNTY TRANSIT FACILITIES.

8 (3) IF THE GOVERNING BODY OF MONTGOMERY COUNTY TRANSFERS
9 TO THE TRANSIT AUTHORITY OPERATION OF ITS SCHEDULED LOCAL BUS SERVICE,
10 THE TRANSIT AUTHORITY SHALL BE ENTITLED TO RECEIVE MONTGOMERY
11 COUNTY'S ANNUAL GRANT FOR ELIGIBLE LOCAL BUS SERVICE UNDER § 10-207 OF
12 THE TRANSPORTATION ARTICLE.

13 (M) THE TRANSIT AUTHORITY SHALL BE SUBJECT TO THE MONTGOMERY
14 COUNTY PUBLIC ETHICS LAW.

15 (N) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO EFFECT ITS
16 PURPOSES.

17 Article - Courts and Judicial Proceedings

18 5-301.

19 (d) "Local government" means:

20 (28) The nonprofit corporation serving as the local public transportation
21 authority for Garrett County pursuant to a contract or memorandum of understanding with
22 Garrett County (Garrett County Community Action Committee, Inc.); [and]

23 (29) The nonprofit corporation serving as the industrial development
24 authority of Carroll County established under Title 12, Subtitle 1 of the Economic
25 Development Article; AND

26 (30) THE MONTGOMERY COUNTY TRANSIT AUTHORITY.

5lr0866

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
2 1, 2015.

MC 24-15—Establishment of a Montgomery County
Independent Transit Authority

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Carter

Typed by: Don

Stored – 10/22/14

Proofread by _____

Checked by _____

By: Montgomery County Delegation and Prince George's County Delegation

A BILL ENTITLED

1 AN ACT concerning

2 Maryland–National Capital Park and Planning Commission – Montgomery
3 County – Commissioner Terms

4 MC/PG 105–15

5 FOR the purpose of authorizing a commissioner appointed from Montgomery County who
6 is designated as chair or vice chair of the Commission to be reappointed for two
7 additional consecutive full terms as long as that commissioner continues to serve as
8 chair or vice chair of the Commission; making a stylistic change; providing for the
9 application of this Act; and generally relating to the terms of the commissioners of
10 the Maryland–National Capital Park and Planning Commission appointed from
11 Montgomery County.

12 BY repealing and reenacting, with amendments,
13 Article – Land Use
14 Section 15–102
15 Annotated Code of Maryland
16 (2012 Volume and 2014 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Land Use

15–102.

(a) (1) The Commission consists of 10 members.

(2) Of the 10 members of the Commission:

(i) five shall be residents and registered voters of Montgomery County; and

(ii) five shall be residents and registered voters of Prince George's County.

(3) (i) Subject to the approval of the County Executive, the County Council shall appoint each commissioner from Montgomery County.

(ii) Subject to the approval of the County Council, the County Executive shall appoint each commissioner from Prince George's County.

(b) Each commissioner shall be an individual of ability, experience, and integrity.

(c) (1) Of the commissioners from each county, not more than three shall be members of the same political party.

(2) A commissioner may not be selected as representing or supporting any special interest.

(d) (1) The term of a commissioner is 4 years and begins on June 15.

(2) The terms of commissioners are staggered as required by the terms provided for commissioners on October 1, 2012.

(3) At the end of a term, a commissioner continues to serve until a successor is appointed and qualifies.

(4) A commissioner who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

1 (5) A commissioner who is appointed to fill a vacancy for an unexpired term
2 shall be a member of the same political party as the commissioner who vacated the office.

3 (6) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
4 PARAGRAPH, A commissioner appointed from Montgomery County may not be appointed
5 for [three] MORE THAN TWO consecutive full terms.

6 (II) A COMMISSIONER APPOINTED FROM MONTGOMERY
7 COUNTY WHO IS DESIGNATED TO THE POSITION OF CHAIR OR VICE CHAIR OF THE
8 COMMISSION UNDER § 15-106 OF THIS SUBTITLE MAY BE REAPPOINTED FOR TWO
9 ADDITIONAL CONSECUTIVE FULL TERMS AS LONG AS THAT COMMISSIONER
10 CONTINUES TO SERVE AS CHAIR OR VICE CHAIR OF THE COMMISSION.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
12 apply retroactively and shall be applied to and interpreted to affect any commissioner
13 appointed to the Maryland-National Capital Park and Planning Commission from
14 Montgomery County on or after June 15, 2014.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
16 1, 2015.

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HB 113—Increase Tort Claim Limits for
Local Governments

HOUSE BILL 113

D3

5lr0914

By: Delegate Conaway

Introduced and read first time: January 26, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Local Government Tort Claims Act – Limits on Liability**

3 FOR the purpose of increasing the limits on liability of a local government for certain claims
4 under the Local Government Tort Claims Act; providing for the application of this
5 Act; and generally relating to the limits on liability of a local government under the
6 Local Government Tort Claims Act.

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 5–303
10 Annotated Code of Maryland
11 (2013 Replacement Volume and 2014 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That the Laws of Maryland read as follows:

14 **Article – Courts and Judicial Proceedings**

15 5–303.

16 (a) (1) Subject to paragraph (2) of this subsection, the liability of a local
17 government may not exceed [~~\$200,000~~] **\$500,000** per an individual claim, and [~~\$500,000~~]
18 **\$1,000,000** per total claims that arise from the same occurrence for damages resulting
19 from tortious acts or omissions, or liability arising under subsection (b) of this section and
20 indemnification under subsection (c) of this section.

21 (2) The limits on liability provided under paragraph (1) of this subsection
22 do not include interest accrued on a judgment.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(b) (1) Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.

(2) A local government may not assert governmental or sovereign immunity to avoid the duty to defend or indemnify an employee established in this subsection.

(c) (1) A local government may not be liable for punitive damages.

(2) (i) Subject to subsection (a) of this section and except as provided in subparagraph (ii) of this paragraph, a local government may indemnify an employee for a judgment for punitive damages entered against the employee.

(ii) A local government may not indemnify a law enforcement officer for a judgment for punitive damages if the law enforcement officer has been found guilty under § 3-108 of the Public Safety Article as a result of the act or omission giving rise to the judgment, if the act or omission would constitute a felony under the laws of this State.

(3) A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

(d) Notwithstanding the provisions of subsection (b) of this section, this subtitle does not waive any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by an employee of a local government.

(e) A local government may assert on its own behalf any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by its employee for whose tortious act or omission the claim against the local government is premised and a local government may only be held liable to the extent that a judgment could have been rendered against such an employee under this subtitle.

(f) (1) Lexington Market, Inc., in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5-406 of this title.

(2) Baltimore Public Markets Corporation, in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5-406 of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Davis-Cook, Shana

From: Michele Keplinger <MicheleK@lgit.org>
Sent: Monday, February 02, 2015 10:53 AM
To: Michele Keplinger
Subject: IMPORTANT - Financial Impact On Local Governments – HB 113 and HB 114
Attachments: Actuarial Analysis of the Fiscal Estimate of Legislation - HB 113 and HB 114.pdf

TO: LGIT Membership

FROM: Tim Ailsworth, LGIT Executive Director

RE: Financial Impact On Local Governments – HB 113 and HB 114

Last week many of you contacted our office regarding the impact on your premiums should the Maryland Local Government Tort Claim Act limit of liability be increased from 200/500 to 500/1,000,000. In an effort to assist our members, the General Assembly and LGIT, we had our actuary Steven Glicksman perform an impact analysis. Please find attached Mr. Glicksman's Actuarial Analysis of the Fiscal Estimate of Legislation which indicates that LGIT's losses (not including the additional cost to defend an increased number of lawsuits which might be filed) would increase by approximately 7.9%.

I would like to point out that this result is a preliminary one that was done in a rush so that you could provide requested information to the Legislative Study Commission.

In conclusion, it is my preliminary opinion that the proposed change would likely effect your rates by as much as 10% taking into account Mr. Glicksman's results plus additional defense costs incurred by LGIT.

Thank you for contacting us concerning this matter.

Tim Ailsworth

Michele Keplinger
Member Services Specialist
Office: 443.561.1700
Fax: 443.561.1701
Cell: 443.603.6667
www.lgit.org

"The Local Government Insurance Trust's mission is to provide coverage and risk management services at stable and competitive rates through an organization that is

owned and managed by its local government members."



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January 30, 2015

Local Government Insurance Trust
7225 Parkway Drive
Hanover, 21076

**ACTUARIAL ANALYSIS
OF THE FISCAL ESTIMATE OF LEGISLATION
HB0113 AND HB0114**

Attn: Mr. Tim Ailsworth
Executive Director

This actuarial analysis has been completed for Local Government Insurance Trust (LGIT) for the specific objective listed. It contains the conclusions of our work and methodology.

The Actuarial Standards of Practice (ASOP) necessitate that we disclose that due to the time of the work a significant time constraint was placed on the completion of this analysis. As such, this should be considered a draft and only used for discussion purposes.

The analysis is divided into the following sections:

- I. Introduction and Objectives
- II. Conclusions and Methodology
- III. Conditions/Limitations

Each section follows.

I. Introduction and Objectives

A. Introduction

The Local Government Insurance Trust (LGIT) was formed by Maryland local governments (counties and municipalities) in 1987 as a means to pool losses, and to purchase services and insurance on a collective basis. It operates a Primary Liability Pool (PLP) and a Property Pool. The membership currently includes most local governments in Maryland.

The PLP has five basic coverages. These are general liability, automobile liability, public officials' liability (includes errors and omissions), law enforcement liability and automobile physical damage. The Property Pool covers multiple perils.

The Local Government Tort Claims Act (LGTCA) governs state tort claims for damages against local governments, and their officials and employees. Under the LGTCA, the liability of a local government may not exceed \$200,000 per claimant and \$500,000 per occurrence. Causes of action include State constitutional and other intentional torts, general liability and automobile liability (non-emergency vehicle) claims

The Maryland Tort Claims Act (MTCA) governs state tort claims against State personnel. Under it, the liability of the State and its units may not exceed \$200,000 per claimant. Causes of action range from State constitutional and other intentional torts to auto (non-emergency vehicle) claims. LGIT defends State personnel (sheriffs and sheriff deputies) in law enforcement and corrections based State tort claims.

LGTCA and MTCA do not include the associated costs of litigation and legal defense for local governments or claims filed in jurisdictions other than Maryland (mostly filed in Federal Court).

summary → The proposed legislation in the Maryland General Assembly for HB0113 increases the liability limits in the LGTCA to \$500,000 per claimant and \$1,000,000 per occurrence. A second legislative proposal, HB0114, increases the MTCA liability limit to \$500,000 per single claimant. The limits do not include the associated costs of litigation and legal defense for local governments or claims filed in jurisdictions other than Maryland (mostly filed in Federal Court).

B. Objectives

The Maryland Department of Legislative Services (the Department) is required by law to prepare a fiscal and policy note on all legislation introduced in the General Assembly (Section 2-1505 of the State Government Article). The legislative proposals, HB0113 and HB 0114 (referred to above) have been introduced in the 2015 session.

A preliminary analysis by the Department suggests that this legislation could have an effect on local governments in Maryland. It has requested assistance from local governments in analyzing and determining the fiscal impact of the proposed HB0113 and HB0114.

1. There are potential additional costs directly due to increasing the current limits of LGTCA to those in HB0113 (\$200,000 per claimant and \$500,000 per occurrence to \$500,000 per claimant and \$1,000,000 per occurrence)

and MTCA to those in HB0114 (\$200,000 per claimant to \$500,000 per claimant).

2. There are potential additional costs indirectly for increases in the associated costs of litigation and legal defense for local governments associated with increasing the current limits of LGTCA to those in HB0113 and MTCA to those in HB0114.

II. Conclusions and Methodology

A. Conclusions

1. The projected additional costs directly due to increasing the current limits of LGTCA to those in HB0113 and MTCA to those in HB0114 are **\$389,531** in 2015/16. See Exhibit -3 for details by coverage.

The amount is for indemnity only. It does not include associated litigation and legal defense costs

2. The projected additional costs indirectly for increases in the associated costs of litigation and legal defense for local governments associated with increasing the current limits of LGTCA to those in HB0113 and MTCA to those in HB0114 are **\$130,000** in 2015/16.

Notes

The amounts are only for LGIT members for the PLP and should not be considered definitive for the entire State. It does not include many of the larger local governments. For example, the City of Baltimore and the counties of Baltimore, Howard, Harford and Prince George's are not included as they do not participate in the PLP. The State itself is not included in the data. It is likely that larger and more complex local governments have a greater propensity for more expensive claims than smaller and less complex ones.

As a point of reference, the projected ultimate losses in the most recent actuarial study for the PLP (not including automobile physical damage as it is not affected) are \$6,587,937 in 2015/16. The projected additional costs are \$519,531 (\$389,531 for increasing the current limits of LGTCA to those in HB0113 and MTCA to those in HB0114.2 plus \$130,000 for projected additional costs indirectly for increases in the associated costs of litigation and legal defense). This is a **7.9%** increase.

The time value of money was not considered.

B. Methodology

1. The additional costs directly due to increasing the current limits of LGTCA to those in HB0113 (\$200,000 per claimant and \$500,000 per occurrence to \$500,000 per claimant and \$1,000,000 per occurrence) and MTCA to those in HB0114 (\$200,000 per claimant to \$500,000 per claimant).

Exhibit -1 (page 1) is a Data Summary for Known Claims with Indemnity Incurred of \$100,000 and Greater for 2004/05 to 2013/14 as of December 31, 2014.

In some instances, especially for automobile liability, there are multiple claims occurrences.

Exhibit -1 (page 1) is a Data Summary for Known Occurrences (Not Single Claims) with Indemnity Incurred of \$200,000 and Greater for 2004/05 to 2013/14 as of December 31, 2014. The summary does not include the claims in Exhibit -1 (page 1) except for situations in multiple claims in Exhibit -1 (page 2) individually has indemnity incurred of \$100,000 and greater. These are denoted by a '*'.

Indemnity refers to payments to claimants that are subject to HB0113 and HB114. Litigation and Legal Expenses Incurred are not limited.

Exhibit -2 (page 1) shows the Projected Claims over LGTCA and MTCA in 2015/16 and Exhibit -2 (page 2) shows the Projected Occurrences over LGTCA and MTCA in 2015/16.

Exhibit -3 shows the Projected Additional Costs over LGTCA and MTCA, to HB0113 and HB0114 in 2015/16.

Since the data is for ten years, the costs of some older claims would likely be much greater in the upcoming year than the year of loss. For example, a claim in 2004/05 would cost more than a similar claim in 2014/15 and beyond.

The claims are for four coverages in the PLP that will be impacted. A fifth coverage offered by the PLP, automobile physical damage is not affected.

impacts by coverage type
i. Automobile Liability

Since the data is for ten years, the costs of some older claims would likely be much greater in the upcoming year than the year of loss. We assumed this to be a factor of 1.50 as an approximation for all years (2004/05 to 2013/14) for 2015/16.

Almost all claims and occurrences are filed in Maryland. As such, we assumed 100.0% are subject to LGTCA and MTCA. They will be impacted by HB0113 and HB0114.

From on our review of the data and actuarial judgment, we estimated the single claims with incurred indemnity of \$100,000 and greater are also over \$200,000 and occurrences with incurred indemnity of \$200,000 and greater are also over \$500,000.

We assume the additional amount over LGTCA and MTCA up to HB0113 and HB0114 is \$150,000 per claim and occurrence.

ii. General Liability

Since the data is for ten years, the costs of some older claims would likely be much greater in the upcoming year than the year of loss. We assumed this to be a factor of 1.50 as an approximation for all years (2004/05 to 2013/14) for 2015/16.

Almost all claims and occurrences are filed in Maryland. As such, we assumed 100.0% are subject to LGTCA and MTCA. They will be impacted by HB0113 and HB0114.

From on our review of the data and actuarial judgment, we estimated the single claims with incurred indemnity of \$100,000 and greater are also over \$200,000 and occurrences with incurred indemnity of \$200,000 and greater are also over \$500,000.

We assume the additional amount over LGTCA and MTCA up to HB0113 and HB0114 is \$150,000 per claim and occurrence.

iii. Law Enforcement Liability

Since the data is for ten years, the costs of some older claims would likely be much greater in the upcoming year than the year of loss. We assumed this to be a factor of 1.50 as an approximation for all years (2004/05 to 2013/14) for 2015/16.

Most claims and occurrences are not filed in Maryland, though this could change as a result of HB0113 and HB0114. This is because some claimants may decide it beneficial to file claims in Maryland rather than Federal Court. The potential recoveries are greater than under LGTCA and MTCA, and the litigation procedures are perceived to be more favorable to plaintiffs. As such, we assumed 25.0% are subject to LGTCA and MTCA. They will be impacted by HB0113 and HB0114.

From on our review of the data and actuarial judgment, we estimated the single claims with incurred indemnity of \$100,000 and greater are also over \$200,000 and occurrences with incurred indemnity of \$200,000 and greater are also over \$500,000.

We assume the additional amount over LGTCA and MTCA up to HB0113 and HB0114 is \$150,000 per claim and occurrence.

iv. Public Officials' Liability

Since the data is for ten years, the costs of some older claims would likely be much greater in the upcoming year than the year of loss. We assumed this to be a factor of 1.50 as an approximation for all years (2004/05 to 2013/14) for 2015/16.

Most claims and occurrences are not filed in Maryland, though this could change as a result of HB0113 and HB0114. This is because some claimants may decide it beneficial to file claims in Maryland rather than Federal Court. The potential recoveries are greater than under LGTCA and MTCA, and the litigation procedures are perceived to be plaintiff friendly. As such, we assumed 25.0% are subject to LGTCA and MTCA. They will be impacted by HB0113 and HB0114.

From on our review of the data and actuarial judgment, we estimated the single claims with incurred indemnity of \$100,000 and greater are also over \$200,000 and occurrences with incurred indemnity of \$200,000 and greater are also over \$500,000.

We assume the additional amount over LGTCA and MTCA up to HB0113 and HB0114 is \$150,000 per claim and occurrence.

2. The additional costs indirectly for increases in the associated costs of litigation and legal defense for local governments associated with increasing the current limits of LGTCA to those in HB0113 and MTCA to those in HB0114.

The additional costs in litigation and legal defense are difficult to quantify. Much of it depends on the reaction of plaintiff's counsel and the local government's reactions. We considered the following factors:

- It appears at the least that the legislative changes would encourage one of two things are likely to result in additional litigation and legal costs:
 - An increase in the number of State tort and constitutional claims filed in State court (especially in perceived plaintiff friendly jurisdictions)
 - An increase in the number of State tort and constitutional claims filed as adjuncts to federal claims (under 42 U.S.C. Section 1983).

- Local governments will be exposed to larger claim demands. They will naturally respond with more vigorous (and expensive) litigation and legal defense. An offsetting factor is that the most expensive types of claims to litigate are law enforcement liability and public officials' liability (see Exhibit -4). These types of claims will still mostly be filed in Federal Court and not be affected by the legislative changes.
- Many local governments use internal staff to litigate claims in most instances. They use external resources only for expensive or problematic claims. While there are additional costs due to using internal staff, they are not obvious as they are interwoven with other costs.

From Exhibit -3, the projected annual claims and occurrences over LGTCA and MTCA are 2.60 in 2015/16. The projected additional costs over LGTCA and MTCA, to HB0113 and HB0114 are \$389,531 in 2015/16.

The first method to project the costs is the assumption that for each claim and occurrence over LGCTA and MTCA that there is another claim that will be affected by the legislative changes. Then, there are 5.20 claims and occurrences 2.30×2). We then assume that the additional costs will be \$25,000 per claim and occurrence. This method results in projected additional litigation and legal costs of \$130,000 in 2015/16.

To test this method, we observe that the ratio of the projected additional litigation and legal costs (\$130,000) in 2015/16 are 33.4% of the projected additional costs directly due to increasing the current limits of LGTCA to those in HB0113 and MTCA to those in HB0114 (\$389,531). Based on our familiarity with similar situations, this appears reasonable.

III. Conditions/Limitations

This analysis is subject to the conditions/limitations listed below:

- *Actuarial Estimates.* Actuarial estimates are subject to material uncertainty from many different sources, including (but not limited to) the random nature of claims, historical experience not being indicative of future experience, changes in development patterns, catastrophes, legal interpretations, legislation and operations.
- *Changes in Operations and Business Environment.* Based on our discussions we understand that there have been no changes in operations or the business environment (other than those identified in the text) that may material impact the analysis.
- *Data.* We relied upon data without verification or audit, other than checks for reasonableness. Unless otherwise stated, we assumed

the data to be correct and complete. If the underlying data is incorrect and/or incomplete, this actuary study will also be incorrect and/or incomplete. Even small differences can have a material impact.

- *Due Diligence.* This study is not a substitute for the due diligence of its users. Every user of this study should place no reliance on this study that would create any duty or liability by Glicksman Consulting, LLC.
- *Economic Environment.* Unless otherwise stated, we assumed the current economic conditions will continue in the foreseeable future. For example, we assumed inflation will remain moderate.
- *Funding Adequacy.* We have not reviewed available assets or other balance sheet items regarding funding adequacy. We have not reviewed contributions, premiums, expenses, investment income or other budget items. We have no opinion regarding the ability of LGIT to pay past claims or future claims.
- *Insurance.* Unless otherwise stated, we assumed no insurance coverage changes (including coverage provided by LGIT to others) subsequent to the date this study was prepared. This includes coverage language, self-insured retention, limitations and similar issues.
- *Insurance Solvency.* Unless otherwise stated, we assumed all insurance is from solvent sources and payable in accordance with terms of the coverage document. We have not reviewed the collectibility of insurance. We have no opinion regarding the collectibility of insurance.
- *Interest Rate.* The exhibits specify the annual interest rate used. Unless otherwise noted, the interest rate used was specified by LGIT. We have no opinion regarding the underlying invested assets or the actual return on investments.
- *Limitation on Damages.* We shall not be liable for any claim or demand by any third party arising out of the services provided except where such claim or demand results from the willful misconduct. In no event shall we be liable to anyone for any amounts representing lost profits, loss of business, or special, indirect, incidental, consequential or punitive damages.
- *Limits in Our Knowledge.* We have not advised on matters of legality, policy language, risk transfer or taxes. We understand that

there have been independent experts engaged in each of these areas.

- *Methodology.* In this study, different actuarial methods were applied. In some instances, the methods yield significantly disparate results. The estimates, projections and recommendations in this study reflect our judgments as to the best method or combination of methods that are most reliable and reflective of the exposure to loss.
- *Minimum Knowledge.* We have assumed LGIT, and persons and users of this study are familiar with common insurance terms and have an appreciation for the significant financial risks involved in an insurance program.
- *Range of Values.* The conclusions of this study are point estimates, projections and recommendations within a wide range of possible outcomes. Where the conclusions are shown as a range of values, it is possible that actual results will fall outside the range, perhaps by a significant amount.
- *Reproduction.* This study may only be reproduced in its entirety.
- *Risk.* Insurance is an inherently risky enterprise. Actual losses may vary significantly from our estimates, projections and recommendations. They may emerge higher or lower. The amounts can be material.
- *Securities Regulatory Organizations.* This study is not intended and may not be disclosed or filed with the Securities Exchange Commission (SEC) or other securities regulatory organizations.
- *Statutory and Judicial Changes.* Legislatures and judiciaries may change statutes that govern indemnification. This includes benefit levels for workers compensation, immunities and limitations for liability, and other similar issues. Unless otherwise stated, we assumed no statutory changes subsequent to the date this study was prepared.
- *Supplemental Data.* In addition to the data provided by LGIT, we supplemented our analysis with data from previous studies, similar organizations and insurance industry statistics, as we deemed appropriate. This includes key assumptions such as (but not limited to) development factors, tail factors, trends, loss elimination ratios, increased limits factors and pure premiums.

The application of supplemental data may represent an additional source of risk in the analysis.

- *Usage.* This study has been prepared for the exclusive use of LGIT. It was not prepared for and may not be appropriate for use by others, such as insurance or reinsurance companies. We have prepared this analysis in conformity with its intended use by persons technically competent in the areas addressed and for the stated purposes only. Judgments as to the conclusions, indications, methods, and data contained in this analysis should be made only after studying this analysis in its entirety. It is assumed that the user of this analysis will seek explanation of any matter in question. In no event shall we be liable to anyone for any amounts representing lost profits, loss of business, or special, indirect, incidental, consequential or punitive damages.

* * * * *

Please call if you have any questions.

Respectfully submitted,

Steven Glicksman, FCAS, MAAA
Actuary
Glicksman Consulting, LLC

HOUSE BILL 114

D3

5lr0918

By: **Delegate Conaway**

Introduced and read first time: January 26, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Tort Claims Act – Limit on Liability**

3 FOR the purpose of increasing the limit on liability of the State and its units under the
4 Maryland Tort Claims Act for injuries to a claimant arising from an incident or
5 occurrence; providing for the application of this Act; and generally relating to the
6 limits on liability of the State and its units under the Maryland Tort Claims Act.

7 BY repealing and reenacting, with amendments,
8 Article – State Government
9 Section 12–104
10 Annotated Code of Maryland
11 (2014 Replacement Volume)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That the Laws of Maryland read as follows:

14 **Article – State Government**

15 12–104.

16 (a) (1) Subject to the exclusions and limitations in this subtitle and
17 notwithstanding any other provision of law, the immunity of the State and of its units is
18 waived as to a tort action, in a court of the State, to the extent provided under paragraph
19 (2) of this subsection.

20 (2) The liability of the State and its units may not exceed **[\$200,000]**
21 **\$500,000** to a single claimant for injuries arising from a single incident or occurrence.

22 (b) Immunity is not waived under this section as described under § 5–522(a) of
23 the Courts and Judicial Proceedings Article.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) (1) The Treasurer may pay from the State Insurance Trust Fund all or part
2 of that portion of a tort claim which exceeds the limitation on liability established under
3 subsection (a)(2) of this section under the following conditions:

4 (i) the tort claim is one for which the State and its units have waived
5 immunity under subsections (a) and (b) of this section;

6 (ii) a judgment or settlement has been entered granting the claimant
7 damages to the full amount established under subsection (a)(2) of this section; and

8 (iii) the Board of Public Works, with the advice and counsel of the
9 Attorney General, has approved the payment.

10 (2) Any payment of part of a settlement or judgment under this subsection
11 does not abrogate the sovereign immunity of the State or any units beyond the waiver
12 provided in subsections (a) and (b) of this section.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
14 apply only prospectively and may not be applied or interpreted to have any effect on or
15 application to any cause of action arising before the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2015.